

**HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES
Thursday, August 16, 2007**

Members Present:

Tom McGuirk, Chairman
Jack Lessard
Vic Lessard
Bill O'Brien
Bryan Provencal

Others Present:

Kevin Schultz, Building Inspector
Joan Rice, Recording Secretary

Chairman McGuirk called the meeting to order at 7:00 p.m.

The Pledge of Allegiance was said.

Chairman McGuirk introduced the members of the Board.

Chairman McGuirk announced that Petition 34-07 has been withdrawn.

37-07 The continued Appeal by Colsak Investment, LLC of Administrative Decision for property located at 426 Winnacunnet Road re denial of a building permit. This property is located at Map 208, Lot 48 in a RA/RB zone.

Chairman McGuirk said that the attorneys requested a continuance until next month.

Moved by Mr. O'Brien, seconded by Mr. Vic Lessard, to grant a continuance until next month for Petition 37-07 and that it be first on the agenda.

VOTE: 4-0-0. Motion passed.

Mr. Provencal joined the meeting at this time.

38-07 The petition of George & Donna Lynde for property located at 140 Kings Highway, Unit 10, seeking relief from Articles 1.3, 4.5.3 and 8.2.3 to construct a new 10X20 open deck with stairs on the south portion of the building and a new 8X8 storage shed on the east side of the property. This property is located at Map 183, Lot 18 in a RB zone.

George and Donna Lynde came forward to request a variance on the setback from their property line. Others on their street have obtained similar variances. The petitioners

went through the five criteria as presented in the application, and feel they have satisfied the criteria.

Questions from the Board

There were no questions from the Board.

Comments from the Audience

Ms. Laura Costa, 132 Kings Highway, came forward. She said she was an abutter to the property and disagrees with this petition on the basis that the distance from the petitioners' house to hers was only 14 feet and the addition of a shed would make it too congested. She presented a map and picture to support her position.

Back to the Board

Mr. O'Brien said the decks on other properties in the area are at least four feet from other properties. Mr. O'Brien said he would be more comfortable if the deck were smaller and moved so as to be four feet from the property line. Mr. Vic Lessard said it is important to first determine exactly where the property line is since the pins which once marked the line have disappeared. The applicant and the abutter disagree on where the line is, and the abutter's fence which was presumed to be the line is well inside her property. Mr. Schultz said the Town Planner may have something on file to clarify the location of the property line.

Chairman McGuirk asked if there were any conditions on the shed. Mr. O'Brien said it would be the same setback on the shed, i.e., four feet.

Moved by Mr. O'Brien, seconded by Mr. Vic Lessard, to grant Petition 38-07 with the stipulation that there be a minimum of four feet from the property line for both the deck and the shed, including the barrel bin.

Chairman McGuirk polled the Board on their acceptance of the five criteria. The Board was in agreement.

VOTE: 5-0-0. Motion passed.

39-07 The petition of MBA Realty Trust, through John & Nancy McCaffery & Timothy & Linda Ahern, for property located at 22 Dover Avenue seeking relief from Articles 4.1.1, 4.5.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5 and 8.2.6 to rebuild three units that were destroyed by fire. This property is located at Map 296, Lot 155 in a RB zone.

Nancy McCaffery and Linda Ahern of Woburn, MA came forward. Ms. McCaffery said that their cottages were destroyed by fire and they would like to begin construction of three replacement units, which will be connected together. She said they were close to meeting most of the setbacks with the exception of multi-family. She said she felt these new units would enhance the neighborhood. She then went through the five criteria as presented in the application and said she felt they have satisfied the criteria.

Questions from the Board

Chairman McGuirk said that this is leased land so there is a deed restriction on the property. The Town Attorney has determined that the Board cannot listen to or use the deed restriction in the argument and must limit its discussion to dimensional variances. Mr. Schultz said there is nothing being proposed to violate this at this time.

Comments from the Audience

John Christianson, 12 Epping Avenue, came forward. He said the best thing is for people to talk among themselves and come up with solutions. Mr. Vic Lessard asked Mr. Christianson how he felt about this project. Mr. Christianson replied that he has seen what they are trying to do and agrees with it. However, other people have similar issues and problems.

Karen Murchom came forward. She said her mother has the cottage across the street from this property. She asked how many stories the buildings would have and where the parking would be. The petitioners replied that they would be 2-story buildings with parking in front.

Jim Walsh, 18 Dover Avenue, came forward and said he is a direct abutter and is completely in favor of granting the petition. He said he feels it would definitely enhance the neighborhood.

Back to the Board

Mr. O'Brien discussed some discrepancies between the elevation, the sketch and the floor plan. He asked if this would go before the Planning Board. Chairman McGuirk said that it would. Mr. O'Brien said he wanted everything accurate when it leaves this Board.

It was agreed that the petitioners would need to amend their drawings to be in agreement.

Moved by Mr. Jack Lessard, seconded by Mr. Vic Lessard, that Petition 39-07 be continued next month at which time the Petitioners will present amended drawings.

VOTE: 5-0-0. Motion passed.

40-07 The petition of 845 Lafayette Ass. LLC for property located at 845 Lafayette Road seeking relief from Articles 5.4.2(d) and Table II to allow for 48 sq ft directory sign where 32 sq ft is allowed and 18' high where 12' high is allowed to accommodate sign visibility and safety. This property is located at Map 90, Lot 31 in a B zone.

Vic Lessard said that he would like to step down for the hearing of this petition.

The petitioner, Peter Lucas, Hampton, and Chip Lowery, Portsmouth Sign Company, came forward. Mr. Lucas presented drawings of the proposed sign. Mr. Lowery said the extra space is being requested for visibility to show the names of the tenants in the center. There will be only one sign on the property.

Mr. Lucas then went through the five criteria as presented in the application and said he felt the criteria had been met.

Questions from the Board

There were no questions from the Board.

Comments from the Audience

Mr. Vic Lessard said this sign will take care of all the tenants and will be clean and neat.

Back to the Board

Moved by Mr. O'Brien, seconded by Mr. Provencal, to approve Petition 40-07.

Chairman McGuirk polled the Board on their acceptance of the five criteria. The Board was in agreement.

VOTE: 4-0-0. Motion passed.

41-07 The petition of KMJ Realty Trust, Pamela Nyhan, Trustee, for property located at 430 High Street seeking relief from Articles 1.3 and 6.3.9 to allow parking for functions, for guests from 100-148 to be provided at a remote, off-site municipal parking area with shuttle service to the site. This property is located at Map 166.

Attorney Stephen Ells, of Holmes & Ells, came forward. He explained that there are 33 on-site parking spaces at this property. This would allow for 99 guests. The Fire Department has issued an occupancy permit for up to 148 persons. Therefore, for the

occasional function in excess of 99 guests parking is a problem. They are, therefore, suggesting that parking be provided at an off-site location with shuttle service. For this reason they are seeking a variance from the ordinance requiring that all parking be on-site. Attorney Ells said that Mr. Nyhan would accept a reasonable limitation on the number of times a function in excess of 99 guests would occur. Attorney Ells then went through the five criteria as presented in the application and said he felt the criteria had been met.

Questions from the Board

Mr. Vic Lessard asked what the limit would be for the larger functions. Mr. Nyhan replied that there have been no more than five large functions per year over the past five years.

Chairman McGuirk said he felt there should be no specific number specified.

Comments from the Audience

Ken Sakurai, 425 High Street, came forward. He said that he felt the immediate abutters were opposed to granting this variance. He said the Victoria Inn is not suited to such large functions and there would be overcrowding. Mr. Sakurai also said he feels the parking plan is improperly computed.

John Christianson, 12 Epping Avenue, came forward. He said although he is not an abutter, he feels that the Victoria Inn has been wonderful for Hampton and the Nyhans have been good neighbors and it is too bad that some abutters are making it difficult for them to do business.

Back to the Board

Mr. Jack Lessard said he thinks the Victoria Inn is a good thing for the Town of Hampton.

Mr. O'Brien asked where the off-site parking might take place. Attorney Ells replied that it could be behind the Town Office building or at a hotel.

Moved by Mr. Jack Lessard, seconded by Mr. Provencal, to approve Petition 41-07.

Chairman McGuirk polled the Board on their acceptance of the five criteria. The Board was in agreement.

VOTE: 4-0-1 (McGuirk)

42-07 The petition of Nana Beach Realty Trust, Andrew Guthrie, Trustee, for property located at 30-36 River Avenue seeking relief from Article 1.2, 1.6, 4.1.1, 4.5.1, 4.5.2, 4.5.3, 6.2, 6.3.9, 6.4.2, 8.2.3, 8.2.4, 8.2.5, and 8.2.6 to construct a new 2 family duplex to replace the 2 units that were destroyed by fire and which did not conform to dimensional requirements, to allow stacked parking, to allow the construction of a duplex on a lot containing 3,411 sq ft where 5,000 sq ft is required per dwelling unit, to allow a front yard setback of 4.7' where 20' is required, to allow a rear yard setback of 4'7" where 10' is required, to allow construction of a duplex which requires 6 off street parking spaces, to allow one parking space which is 3' off site, and to allow one parking space of approximately 9'x15' where 9'x18' is required, to allow a duplex which is 4.7' to 7.7' from front, side & rear yard setbacks and which is approximately 9' from the existing dwelling on the lot, where a distance of 40' from all points is required, to allow for a driveway which is approximately 2' away from the side of any building where 10' is required, to allow for a driveway which does not comply with new town subdivision streets and to allow for a new duplex with an open space buffer of 4.7' to 7.7' or more around the boundaries of the site where 20' is required. This property is located at Map 296, Lot 157 in a RB zone.

Attorney Sharon Somers, of Donahue, Tucker & Ciandella, came forward. Attorney Somers said there had originally been three buildings and two of them had been destroyed by fire. The proposal is to replace the two buildings with a 3-story duplex with four parking spaces. She said the dimensional variance will be more conforming than it was before. Attorney Somers then went through the five criteria as presented in the application and said she felt the criteria had been met.

Chairman McGuirk said that, similar to the previous application, this is leased land with a deed restriction on the property, so the Board cannot listen to or use the deed restriction in the argument, and must limit its discussion to dimensional variances.

Questions from the Board

There were no questions from the Board.

Comments from the Audience

Walter Wyse, 3 River Avenue, came forward. He said Mr. Guthrie's proposal will protect his abutters because of the fire protection which will be used.

June White, 8 River Avenue, came forward. She said these buildings will make the area nicer and the neighborhood will benefit.

Nancy McCaffery came forward and said her concern is the setback. She would like to see at least a 7' setback.

John McCaffery came forward and said that having 14 feet between buildings buys the Fire Department time in the event of a fire.

John Christianson came forward and commended Mr. Guthrie for all he has done for the Island and area.

Attorney Somers said they were dealing with a very small lot and they were doing their best to work within the confines of that lot. While they would like to comply with all the various setbacks, it is not feasible to rebuild and have conformance with all setbacks. They feel the inside parking and sprinklers offset any concerns.

Back to the Board

Jack Lessard read three letters which were against the granting of the petition.

Mr. Vic Lessard explained that he had been a member of the Board of Selectmen when the deed restrictions were placed on these lots and wanted to know how they would be applied, even if this Board approves the request. He asked Mr. Schultz if he would grant a building permit if the Board approves the petition. Mr. Schultz replied that he could not issue any permit that would allow for any violation of any of the deed restrictions.

Mr. O'Brien asked about the request for relief from 1.6 which runs for six pages in the Zoning Ordinance. Attorney Somers replied that this refers to the stacked parking. Mr. O'Brien stated that the request appeared to broad since all of section 1.6 was referenced, and unless the request specified only the stacked parking issue, that approval of the request would actually grant relief from all of 1.6.

Attorney Somers said parking may go onto Town land by 6 feet. The parking arrangement is the same as it has always been. The neighbor does not want to give an easement, so parking is being requested off-site.

Mr. Jack Lessard suggested that the parking be for one car rather than two.

Attorney Somers suggested that the Board proceed with the other variance requests and then at a later date petitioner can come back and seek relief for one parking space.

Mr. O'Brien said the issues had been addressed and the Board should be careful about establishing precedence.

Chairman McGuirk said that in addition to the parking issue, the 4 foot vs. 7 foot setback is of concern since the driver of a car backing out cannot see to the side until the car is already on the sidewalk or the street.

Attorney Somers said they would like to withdraw without prejudice.

Moved by Mr. Vic Lessard, seconded by Mr. O'Brien, that the petitioner for 42-07 be allowed to withdraw without prejudice.

VOTE: 5-0-0. Motion passed.

Adjournment

There being no further business to come before the Board, Mr. O'Brien **moved**, seconded by Mr. Vic Lessard, that the meeting be adjourned.

VOTE: 5-0-0. Motion passed.

The meeting was adjourned at 10:20 p.m.

Respectfully submitted,

Joan Rice
Recording Secretary